

No. 87-1589

Supreme Court, U.S.
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JOSEPH E. SPANIOLO, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY,
Petitioner,

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Respondent.

PETITIONER'S REPLY BRIEF

G. Edward Yurcon The Pittsburgh & Lake Erie Railroad Company 780 Commerce Court Four Station Square Pittsburgh, Pennsylvania 15219 (412) 263-3806 (Counsel for Petitioner)	Richard L. Wyatt, Jr. (Counsel of Record) Ronald M. Johnson Jonathan A. Gruver Akin, Gump, Strauss, Hauer & Feld 1333 New Hampshire Ave., N.W. Suite 400 Washington, D.C. 20036 (202) 887-4000
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Date: June 21, 1988

Pursuant to Rule 22.5 of the Rules of the Supreme Court of the United States, Petitioner, The Pittsburgh & Lake Erie Railroad Company ("P&LE"), hereby files this brief in reply to the brief submitted by Respondent Railway Labor Executives' Association ("RLEA") in response to the petition.

Respondent agrees that the issue presented by this case ("P&LE I") is one that is extremely important to the entire rail industry (Response at 7, 9). However, RLEA asks this Court to withhold a decision on P&LE's petition until the Court resolves the petition in two other cases presenting the issue of whether the Interstate Commerce Commission's ("ICC") jurisdiction under the Interstate Commerce Act ("ICA") supersedes inconsistent requirements of the Railway Labor Act ("RLA"), *Pittsburgh & Lake Erie Railroad Co. v. RLEA*, Sup. Ct. No. 87-1888 ("P&LE II"), and *RLEA v. Guilford Transportation Industries, Inc.*, Sup. Ct. No. 87-1911. In its subsequent response to P&LE's petition in *P&LE II*, No. 87-1888, RLEA agrees that petition is certwothy, but now argues that *RLEA v. Guilford Transportation Industries, Inc.*, or *RLEA v. Chicago & North Western Transportation Co.*, Sup. Ct. No. 87-2049, not *P&LE II*, is its preferred vehicle for resolution of the interplay of the ICA and RLA. As P&LE explains here, and in its Reply in No. 87-1888, also filed this day, the Court should not defer consideration of *P&LE I* and *II*, but should consolidate those petitions and give them priority consideration.

First, the disputes between rail labor and management arising from the sale of lines of railroads involve the interplay of the ICA, RLA and Norris-LaGuardia Act. Efficient resolution of this interplay does not lend itself to a piecemeal examination as RLEA suggests. Of the three railroad line sales which have

spawned these four petitions for certiorari, only P&LE's sale presents both the issue of whether the ICA supersedes inconsistent RLA requirements and the accommodation of the ICA and Norris-LaGuardia Act.

Second, *P&LE I* and *II* should not be deferred until the Court resolves *Guilford*, because resolution of *Guilford* will not necessarily determine the outcome of *P&LE I* and *II* or other line sale cases. The transaction that was the subject of *Guilford* was governed by Section 11341(a) of the Interstate Commerce Act, 49 U.S.C. § 11341(a), which expressly preempts all other laws. While P&LE does not believe an express preemption is necessary, the sale of P&LE's lines, and other pending line sale cases, were governed by a different section of the ICA, 49 U.S.C. § 10901. P&LE would also note that this Court recently denied a rail union petition for certiorari from a decision virtually identical to *Guilford*. *Brotherhood of Locomotive Engineers v. Boston & Maine Corp.*, 788 F.2d 794 (1st Cir.), cert. denied, 107 S. Ct. 111 (1986).

Third, of all of the line sale cases, only P&LE's case involves the scope of the RLA's bargaining and status quo obligations when an employer is going completely out of business as a railroad. These issues were not addressed in *Guilford* or *Chicago & North Western*, because the appellate courts there held the ICA preempted any RLA bargaining requirements.¹ Additionally, those cases involved railroads seeking to sell only a part of their systems. Thus, even if this Court decided the ICA preemption issue in favor of the unions, such a result would not dispose of P&LE's case. Moreover, resolution of the bargaining and status quo obligations as advocated by P&LE would avoid a conflict between the ICA and

¹ Nor were they addressed in *Burlington Northern R.R. Co. v. United Transportation Union*, Nos. 87-2581 & 87-2600 (8th Cir. May 31, 1988), petition for reh'g en banc filed, (June 10, 1988), for similar reasons.

RLA on the facts of P&LE's case. If, as P&LE believes, an employer has an absolute right to go out of business, then the RLA obligations may not be present here. Cf. *Textile Workers Union v. Darlington Manufacturing Co.*, 380 U.S. 263 (1965). The bargaining and status quo issues presented by P&LE are of vital interest and have never before been addressed by the Court in the context of the RLA.²

Finally, and of vital consideration to P&LE, if P&LE is to have meaningful Supreme Court review, that review must come soon. As P&LE previously explained and the lower courts found, it is in dire financial straits. It is ironic that RLEA and the ICC³ present this as an excuse for selection of their favored cases as the proper vehicle for Supreme Court review. The fact that P&LE must find a buyer or face liquidation or bankruptcy is a compelling reason to give P&LE's case priority, not for further delay to hear cases involving railroads which do not face economic catastrophe.

In that regard, only P&LE's case presents a constitutional issue which Respondent would choose to have this Court ignore. That issue, whether an order indefinitely prohibiting a railroad that is operating at a loss from going out of business until it completes the bargaining procedures of the RLA constitutes an unjust taking of property in violation of the Fifth Amendment, is not presented by

² Given partial economic deregulation of the railroad industry and complete deregulation of the airline industry, these issues will likely arise with greater frequency as companies will be more likely to fail due to the greater play of market forces.

³ The ICC, in a memorandum filed in *P&LE II*, suggests that all petitions be held in abeyance until *Burlington Northern R.R. Co. v. United Transportation Union* reaches the Supreme Court. See *supra*, note 1. As explained more fully in P&LE's Reply in No. 87-1888, P&LE vigorously opposes the ICC's suggestion. It is problematic when that case will reach this Court. In any event, the issues present there are already in *P&LE I* and *II*.

any of the other cases for which review has been sought and is an independent ground for this Court to grant review in *P&LE*'s case.

Petitioner respectfully submits that for the foregoing reasons, this Court should not defer consideration of this petition until the petitions in the other cases are ready to be reviewed later this year, but should instead resolve this petition now by issuing a writ of certiorari to the Third Circuit, granting review of its decision in this matter and in *P&LE II*.

Respectfully submitted,

Richard L. Wyatt, Jr.

(Counsel of Record)

Ronald M. Johnson

Jonathan A. Gruver

(Counsel for Petitioner)

AKIN, GUMP, STRAUSS, HAUER
& FELD

1333 New Hampshire Avenue, N.W.

Suite 400

Washington, D.C. 20036

(202) 887-4000

G. Edward Yurcon
(Counsel for Petitioner)
The Pittsburgh & Lake Erie
Railroad Company
780 Commerce Court
Four Station Square
Pittsburgh, Pennsylvania 15219
(412) 263-3806

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